

AMERICAS MINING CORPORATION

PROMISSORY NOTE DUE OCTOBER 31, 2009

\$123,250,000.00

[New York, New York]  
[January \_\_, 2003]

FOR VALUE RECEIVED, AMERICAS MINING CORPORATION, a Delaware corporation ("Maker"), unconditionally promises to pay to SOUTHERN PERU HOLDINGS CORPORATION, a Delaware corporation ("Payee"), and its successors and permitted assigns, in the manner and at the place hereinafter provided, the principal amount of One Hundred Twenty-Three Million, Two Hundred Fifty Thousand and No/100 U.S. Dollars (\$123,250,000.00) in seven consecutive annual installments, consisting of \$17,607,143.00 each, on October 31 of each year, commencing October 31, 2003 and ending October 31, 2009; *provided* that the last such installment shall be in the amount necessary to pay this Note in full.

Maker also promises to pay interest on the unpaid principal amount hereof from the date hereof, or from the most recent date to which interest has been paid, until paid in full at a rate per annum equal to 7%; *provided* that any principal amount not paid when due and, to the extent permitted by applicable law, any interest not paid when due, in each case whether at stated maturity, by acceleration or otherwise (both before as well as after judgment), shall bear interest payable upon demand at a rate that is 2% per annum in excess of the rate of interest otherwise payable under this Note. Interest on this Note shall be payable in arrears on each date on which an installment of principal is due and payable hereunder, upon any prepayment of this Note (to the extent accrued on the amount being prepaid) and at maturity. All computations of interest shall be made by Payee on the basis of a 365-day year, for the actual number of days elapsed in the relevant period (including the first day but excluding the last day).

1. **Payments.** All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds, without set-off, counterclaim or deduction of any kind, at such place as Payee or its successors or permitted assigns may direct from time to time. Whenever any payment on this Note is stated to be due on a day that is not a Business Day (capitalized terms used herein and not otherwise defined herein shall have the meanings provided in Section 7 below), such payment shall instead be made on the next Business Day, and such extension of time shall be included in the computation of interest payable on this Note.

2. **Prepayments.** Maker shall have the right at any time and from time to time to prepay the principal of this Note in whole or in part, without premium or penalty. Each prepayment hereunder shall be accompanied by interest on the principal amount of the Note being prepaid to the date of prepayment.

3. **Reference Agreement.** Maker and Payee are parties to that certain Stock Purchase Agreement dated as of [January \_\_, 2003] (the "Stock Purchase Agreement") with SPHC II Incorporated and ASARCO Incorporated ("Asarco"), pursuant to which Payee will sell

to Maker 43,348,949 shares of Class A Common Stock of Southern Peru Copper Corporation. In partial consideration for such sale, Maker has agreed to issue this Note to Payee. This Note is being delivered pursuant to the Stock Purchase Agreement.

4. **Representations and Warranties.** Maker hereby represents and warrants to Payee that:

(a) it is a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to own and operate its properties, to transact the business in which it is now engaged and to execute and deliver this Note;

(b) this Note constitutes the duly authorized, legally valid and binding obligation of Maker, enforceable against Maker in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(c) all consents and grants of approval required to have been granted by any Person in connection with the execution, delivery and performance of this Note have been granted, are in full force and effect, and are non-appealable;

(d) there is no pending or threatened action, suit, litigation, investigation, arbitration or other proceeding involving or affecting Maker or any of its properties or assets which could reasonably be expected to materially and adversely affect Maker's ability to execute, deliver and perform its obligations under this Note; and

(e) the execution, delivery and performance by Maker of this Note do not and will not (i) violate any law, governmental rule or regulation, court order, writ, injunction or agreement to which it is subject or by which its properties are bound or the charter documents or bylaws of Maker or (ii) result in the creation of any lien or other encumbrance with respect to the property of Maker.

5. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default":

(a) failure of Maker to pay any principal, interest or other amount due under this Note within 30 days after the date when due, whether at stated maturity, by acceleration or otherwise; or

(b) entry of any order, judgment or decree against Maker decreeing the dissolution of Maker; or

(c) (i) entry by a court having jurisdiction in the premises of a decree or order for relief in respect of Maker in an involuntary case under Title 11 of the United States Code entitled "Bankruptcy" (as now and hereinafter in effect, or any successor thereto, the "Bankruptcy Code") or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed; or grant of any other similar relief under any applicable federal or state law; or (ii) commencement of an involuntary case against Maker under any

applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or entry of a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Maker or over all or a substantial part of its property; or the involuntary appointment of an interim receiver, trustee or other custodian of Maker for all or a substantial part of its property; or issuance of a warrant of attachment, execution or similar process against any substantial part of the property of Maker; and, in the case of any event described in this clause (ii), the continuance of such event for 60 days unless dismissed, bonded or discharged; or

(d) entry of an order for relief with respect to Maker or commencement by Maker of a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or consent by Maker to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law; or consent by Maker to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or assignment made by Maker for the benefit of creditors; or any inability or failure, or admission in writing of any inability or failure, by Maker to pay its debts as such debts become due; or any adoption by the Board of Directors of Maker (or any committee thereof) of any resolution or other authorization of action to approve any of the foregoing.

6. **Remedies.** Upon the occurrence of any Event of Default specified in Section 5(b), 5(c) or 5(d) above, the principal amount of this Note together with accrued interest thereon shall become immediately due and payable, without presentment, demand, notice, protest or other requirements of any kind (all of which are hereby expressly waived by Maker). Upon the occurrence and during the continuance of any other Event of Default Payee may, by written notice to Maker, declare the principal amount of this Note together with accrued interest thereon to be due and payable, and the principal amount of this Note together with such interest shall thereupon immediately become due and payable without presentment, further demand or notice, protest or other requirements of any kind (all of which are hereby expressly waived by Maker).

7. **Definitions.** The following terms used in this Note shall have the following meanings:

**"Business Day"** means any day other than a Saturday, Sunday or legal holiday under the laws of the State of Arizona or the Federal District of Mexico or any other day on which banking institutions located in the State of Arizona or the Federal District of Mexico are authorized or required by law or other governmental action to close.

**"Event of Default"** means any of the events set forth in Section 5.

**"Person"** means any individual, partnership, joint venture, firm, corporation, association, bank, trust or other enterprise, whether or not a legal entity, or any government or political subdivision or any agency, department or instrumentality thereof.

8. **Miscellaneous.**

(a) All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, telecopied or delivered as follows: if to Maker, at 2575 East Camelback Road, Suite 500, Phoenix, AZ 85016, Attention: Chief Legal Officer; and if to Payee, at Baja California 200, Colonia Roma Sur, 06760 Mexico City, Mexico, Attention: Chief Legal Officer; or in each case at such other address as shall be designated by Payee or Maker. All such notices and communications shall, when mailed, telecopied or sent by overnight courier, be effective when deposited in the mails, delivered to the overnight courier, or sent by telecopier.

(b) Maker promises to pay all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection, interpretation and/or enforcement of this Note.

(c) No failure or delay on the part of Payee or any other holder of this Note to exercise any right, power or privilege under this Note and no course of dealing between Maker and Payee shall impair such right, power or privilege or operate as a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies expressly provided in this Note are cumulative to, and not exclusive of, any rights or remedies that Payee would otherwise have. No notice to or demand on Maker in any case shall entitle Maker to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Payee to any other or further action in any circumstances without notice or demand.

(d) Maker and any endorser of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(e) If any provision in or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF MAKER AND PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(g) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST MAKER ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS NOTE MAKER ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND

IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS NOTE. Maker hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to Maker at its address set forth below its signature hereto, such service being hereby acknowledged by Maker to be sufficient for personal jurisdiction in any action against Maker in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of Payee to bring proceedings against Maker in the courts of any other jurisdiction.

(h) MAKER AND, BY THEIR ACCEPTANCE OF THIS NOTE, PAYEE AND ANY SUBSEQUENT HOLDER OF THIS NOTE, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE AND THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED.

(i) Neither Payee nor any permitted transferee of this Note may assign, pledge, transfer or convey this Note to any Person without the prior written consent of Maker, and any attempt to so assign, pledge, transfer or convey this Note shall be null and void; provided that Payee (a) may assign all (but not less than all) of its interest in this Note to Asarco and (b) may grant a security interest in this Note to the Coeur d'Alene Tribe of Idaho to secure the obligations of Asarco under that certain Settlement Agreement between the Coeur d'Alene Tribe, ASARCO Incorporated and Southern Peru Holdings Corporation, dated January \_\_, 2003.

**IN WITNESS WHEREOF**, Maker has caused this Note to be executed and delivered by its duly authorized officer as of the day and year and at the place first above written.

AMERICAS MINING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

AMERICAS MINING CORPORATION  
PROMISSORY NOTE DUE MAY 31, 2010

\$100,000,000.00

[New York, New York]  
[January \_\_, 2003]

FOR VALUE RECEIVED, AMERICAS MINING CORPORATION, a Delaware corporation ("Maker"), unconditionally promises to pay to SOUTHERN PERU HOLDINGS CORPORATION, a Delaware corporation ("Payee"), and its successors and permitted assigns, in the manner and at the place hereinafter provided, the principal amount of One Hundred Million and No/100 U.S. Dollars (\$100,000,000.00) in eight consecutive annual installments, consisting of \$12,500,000 each, on May 31 of each year, commencing May 31, 2003 and ending May 31, 2010; *provided* that the last such installment shall be in the amount necessary to pay this Note in full.

Maker also promises to pay interest on the unpaid principal amount hereof from the date hereof, or from the most recent date to which interest has been paid, until paid in full at a rate per annum equal to 7%; *provided* that any principal amount not paid when due and, to the extent permitted by applicable law, any interest not paid when due, in each case whether at stated maturity, by acceleration or otherwise (both before as well as after judgment), shall bear interest payable upon demand at a rate that is 2% per annum in excess of the rate of interest otherwise payable under this Note. Interest on this Note shall be payable in arrears on each date on which an installment of principal is due and payable hereunder, upon any prepayment of this Note (to the extent accrued on the amount being prepaid) and at maturity. All computations of interest shall be made by Payee on the basis of a 365-day year, for the actual number of days elapsed in the relevant period (including the first day but excluding the last day).

1. **Payments**. All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds, without set-off, counterclaim or deduction of any kind, at such place as Payee or its successors or permitted assigns may direct from time to time. Whenever any payment on this Note is stated to be due on a day that is not a Business Day (capitalized terms used herein and not otherwise defined herein shall have the meanings provided in Section 7 below), such payment shall instead be made on the next Business Day, and such extension of time shall be included in the computation of interest payable on this Note.

2. **Prepayments**. Maker shall have the right at any time and from time to time to prepay the principal of this Note in whole or in part, without premium or penalty. Each prepayment hereunder shall be accompanied by interest on the principal amount of the Note being prepaid to the date of prepayment.

3. **Reference Agreements**. Maker and Payee are parties to that certain Stock Purchase Agreement dated as of [January \_\_, 2003] (the "Stock Purchase Agreement") with SPHC II Incorporated and ASARCO Incorporated ("Asarco"), pursuant to which Payee will sell

to Maker 43,348,949 shares of Class A Common Stock of Southern Peru Copper Corporation. In partial consideration for such sale, Maker has agreed to issue this Note to Payee. This Note is being delivered pursuant to the Stock Purchase Agreement. This Note is guaranteed as provided in the Guaranty.

4. **Representations and Warranties.** Maker hereby represents and warrants to Payee that:

(a) it is a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to own and operate its properties, to transact the business in which it is now engaged and to execute and deliver this Note;

(b) this Note constitutes the duly authorized, legally valid and binding obligation of Maker, enforceable against Maker in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(c) all consents and grants of approval required to have been granted by any Person in connection with the execution, delivery and performance of this Note have been granted, are in full force and effect, and are non-appealable;

(d) there is no pending or threatened action, suit, litigation, investigation, arbitration or other proceeding involving or affecting Maker or any of its properties or assets which could reasonably be expected to materially and adversely affect Maker's ability to execute, deliver and perform its obligations under this Note; and

(e) the execution, delivery and performance by Maker of this Note do not and will not (i) violate any law, governmental rule or regulation, court order, writ, injunction or agreement to which it is subject or by which its properties are bound or the charter documents or bylaws of Maker or (ii) result in the creation of any lien or other encumbrance with respect to the property of Maker.

5. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default":

(a) failure of Maker to pay any principal, interest or other amount due under this Note within 30 days after the date when due, whether at stated maturity, by acceleration or otherwise; or

(b) entry of any order, judgment or decree against Maker decreeing the dissolution of Maker; or

(c) (i) entry by a court having jurisdiction in the premises of a decree or order for relief in respect of Maker in an involuntary case under Title 11 of the United States Code entitled "Bankruptcy" (as now and hereinafter in effect, or any successor thereto, the "Bankruptcy Code") or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed; or grant of any other similar relief under any applicable



federal or state law; or (ii) commencement of an involuntary case against Maker under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or entry of a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Maker or over all or a substantial part of its property; or the involuntary appointment of an interim receiver, trustee or other custodian of Maker for all or a substantial part of its property; or issuance of a warrant of attachment, execution or similar process against any substantial part of the property of Maker; and, in the case of any event described in this clause (ii), the continuance of such event for 60 days unless dismissed, bonded or discharged; or

(d) entry of an order for relief with respect to Maker or commencement by Maker of a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or consent by Maker to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law; or consent by Maker to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or assignment made by Maker for the benefit of creditors; or any inability or failure, or admission in writing of any inability or failure, by Maker to pay its debts as such debts become due; or any adoption by the Board of Directors of Maker (or any committee thereof) of any resolution or other authorization of action to approve any of the foregoing; or

(e) any event that causes the Guaranty to cease to be in full force or effect; or any declaration that the Guaranty is null or void or otherwise unenforceable in whole or in part; or any denial or disaffirmation by Guarantor of Guarantor's obligations under the Guaranty.

6. **Remedies.** Upon the occurrence of any Event of Default specified in Section 5(b), 5(c), 5(d) or 5(e) above, the principal amount of this Note together with accrued interest thereon shall become immediately due and payable, without presentment, demand, notice, protest or other requirements of any kind (all of which are hereby expressly waived by Maker). Upon the occurrence and during the continuance of any other Event of Default Payee may, by written notice to Maker, declare the principal amount of this Note together with accrued interest thereon to be due and payable, and the principal amount of this Note together with such interest shall thereupon immediately become due and payable without presentment, further demand or notice, protest or other requirements of any kind (all of which are hereby expressly waived by Maker).

7. **Definitions.** The following terms used in this Note shall have the following meanings:

**"Business Day"** means any day other than a Saturday, Sunday or legal holiday under the laws of the State of Arizona or the Federal District of Mexico or any other day on which banking institutions located in the State of Arizona or the Federal District of Mexico are authorized or required by law or other governmental action to close.

**"Consent Decree"** means the Consent Decree, lodged on January [ ], 2003, with the United States District Court for the District of Arizona in the action styled *United States v. ASARCO, et al.*, No. CV-02-2079-PHX-RCB.

**“Environmental Trust”** has the meaning assigned to that term in the Consent Decree.

**“Event of Default”** means any of the events set forth in Section 5.

**“Guarantor”** means Grupo México, S.A. de C.V., a *sociedad anónima de capital variable* organized under the laws of Mexico.

**“Guaranty”** means the Guaranty dated as of [January \_\_, 2003] by Guarantor in favor of Payee, as the same may be amended, supplemented or otherwise modified from time to time.

**“Person”** means any individual, partnership, joint venture, firm, corporation, association, bank, trust or other enterprise, whether or not a legal entity, or any government or political subdivision or any agency, department or instrumentality thereof.

#### 8. **Miscellaneous**.

(a) All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, telecopied or delivered as follows: if to Maker, at 2575 East Camelback Road, Suite 500, Phoenix, AZ 85016, Attention: Chief Legal Officer; and if to Payee, at Baja California 200, Colonia Roma Sur, 06760 Mexico City, Mexico, Attention: Chief Legal Officer; or in each case at such other address as shall be designated by Payee or Maker or their successors and permitted assigns. All such notices and communications shall, when mailed, telecopied or sent by overnight courier, be effective when deposited in the mails, delivered to the overnight courier, or sent by telecopier.

(b) Maker promises to pay all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection, interpretation and/or enforcement of this Note.

(c) No failure or delay on the part of Payee or any other holder of this Note to exercise any right, power or privilege under this Note and no course of dealing between Maker and Payee shall impair such right, power or privilege or operate as a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies expressly provided in this Note are cumulative to, and not exclusive of, any rights or remedies that Payee would otherwise have. No notice to or demand on Maker in any case shall entitle Maker to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Payee to any other or further action in any circumstances without notice or demand.

(d) Maker and any endorser of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(e) If any provision in or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining

provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF MAKER AND PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(g) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST MAKER ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT (I) IN THE ACTION STYLED UNITED STATES V. ASARCO, INC. AND SOUTHERN PERU HOLDINGS CORPORATION, NO. CIV-02-2079-PHX-RCB IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA OR (II) IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS NOTE MAKER ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS NOTE. Maker hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to Maker at its address set forth below its signature hereto, such service being hereby acknowledged by Maker to be sufficient for personal jurisdiction in any action against Maker in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of Payee to bring proceedings against Maker in the courts of any other jurisdiction.

(h) MAKER AND, BY THEIR ACCEPTANCE OF THIS NOTE, PAYEE AND ANY SUBSEQUENT HOLDER OF THIS NOTE, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE AND THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED.

(i) Neither Payee nor any permitted transferee of this Note may assign, pledge, transfer or convey this Note to any Person without the prior written consent of Maker, and any attempt to so assign, pledge, transfer or convey this Note shall be null and void: provided that (x) Payee may assign all (but not less than all) of its interest in this Note to Asarco and (y) upon such assignment, Asarco may (A) grant a security interest in this Note in favor of the United States and (B) assign all (but not less than all) of its interest in this Note, subject to the security interest referred to in the immediately preceding clause (A), to the trustee of the Environmental Trust.

**IN WITNESS WHEREOF**, Maker has caused this Note to be executed and delivered by its duly authorized officer as of the day and year and at the place first above written.

AMERICAS MINING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **STOCK PURCHASE AGREEMENT**

THIS STOCK PURCHASE AGREEMENT (this "**Agreement**") is entered into as of January[ ], 2003 among Americas Mining Corporation, a Delaware corporation (the "**Purchaser**"), SPHC II Incorporated ("**SPHC II**"), a Delaware corporation wholly-owned by the Purchaser, Southern Peru Holdings Corporation, a Delaware corporation (the "**Seller**"), and ASARCO Incorporated, a New Jersey corporation (the "**Parent**").

WHEREAS, the Seller desires to sell, and the Parent desires the Seller to sell, to the Purchaser 43,348,949 shares of Class A Common Stock, par value \$0.01 per share (the "**Shares**"), of Southern Peru Copper Corporation, a Delaware corporation ("**SPCC**"); and

WHEREAS, the Purchaser desires to purchase the Shares, upon the terms and conditions herein specified;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the parties hereby agree as follows:

1. **Purchase and Sale of the Shares.**

(a) Subject to the terms and conditions of this Agreement, at the Closing (as defined below), the Seller shall, and the Parent shall cause the Seller to, sell, convey, assign, transfer and deliver to the Purchaser the Shares, free and clear of all Encumbrances (as defined below), and

(b) Subject to the terms and conditions of this Agreement, in consideration of the aforesaid sale, conveyance, assignment, transfer and delivery to the Purchaser of the Shares, the Purchaser shall make payment in the amount of \$765.0 million for the Shares as follows:

- (i) \$500 million in cash, subject to Section 1(c);
- (ii) a promissory note of the Purchaser in the principal amount of \$123.25 million, which shall be paid in seven equal principal installments of \$17,607,143.00, payable on each October 31 beginning October 31, 2003, plus accumulated interest at the rate of 7% per annum, substantially in the form attached hereto as Appendix A ("**Note A**");
- (iii) a promissory note of the Purchaser in the principal amount of \$100 million, which shall be paid in eight equal principal installments of \$12.5 million, payable on each May 31 beginning May 31, 2003, plus accumulated interest at the rate of 7% per annum, substantially in the form attached hereto as Appendix B ("**Note B**"), the performance of such note by the Purchaser to be guaranteed by Grupo México,

S.A. de C.V., a Mexican corporation ("**Grupo Mexico**");  
and

- (iv) the cancellation, at the direction and request of the Seller, by the Purchaser and/or its subsidiaries of the \$41.75 million principal amount of debt owed to them by the Parent and/or the Seller and any amount owed to the Purchaser by the Parent pursuant to Section 1(c) (collectively, the "**Intercompany Debt**").

(c) Anything contained herein to the contrary notwithstanding, in the event that the Amended Stipulation among the United States, the Seller and the Parent lodged with the Court (as defined below) on October 11, 2002, and entered on the docket October 16, 2002, and all prior stipulations among the United States, the Seller and the Parent in this matter (the "**Stipulation**") is not terminated on or before January 31, 2003, the Purchaser may loan the Parent \$50 million (the "**Bridge Loan**") solely for the purpose of satisfying, in part, the payment due to the holders of Parent bonds that mature on February 3, 2003. If such loan is made, (i) the amount of cash payment referred to in Section 1(b)(i) and payable as provided in Section 2(c)(i) shall be reduced to \$450 million and (ii) such Bridge Loan shall be added to the Intercompany Debt that is cancelled as provided in Section 1(b)(iv) of this Agreement.

## 2. The Closing.

(a) The sale and transfer of the Shares by the Seller to the Purchaser shall take place at a closing (the "**Closing**") to be held at the offices of Sidley Austin Brown & Wood LLP, 787 Seventh Avenue, New York, New York 10019 one Business Day (as defined below) following the satisfaction and/or waiver of all conditions to close set forth in Section 6 of this Agreement, or such other date as may be mutually agreed upon by the Purchaser and the Seller (the "**Closing Date**"). All such documents and funds to be delivered at the Closing shall be deemed delivered simultaneously, and upon such delivery the sale of the Shares shall be final and irrevocable. As used herein, the term "**Business Day**" shall mean a day other than Saturday, Sunday or any other day on which commercial banks in New York, New York are authorized or required by law to close.

(b) At the Closing, the Seller shall, and the Parent shall cause the Seller to, deliver to the Purchaser

- (i) a certificate or certificates representing the Shares, each such certificate to be duly and validly endorsed in favor of the Purchaser (or in blank, sufficient to enable the Purchaser to register the Shares in the name of the Purchaser or its designee) or accompanied by a separate stock power duly and validly executed by such Shareholder and otherwise sufficient to vest in Purchaser or its designee good and marketable title to such Shares

- (ii) a copy of the Consent Decree lodged with the United States District Court for the District of Arizona (the "**Court**") on January \_\_, 2003 (the "**Consent Decree**"), attached hereto as Appendix C; and
  - (iii) such other documents as are required to be delivered by the Seller to the Purchaser at or prior to the Closing in connection with the transactions contemplated hereby.
- (c) At the Closing, the Purchaser shall deliver to the Seller
- (i) \$500 million, subject to Section 1(c), in immediately available funds by wire transfer to an account designated by the Seller in writing no later than three business days prior to the Closing Date;
  - (ii) Note A and Note B duly and validly executed by the Purchaser;
  - (iii) a guaranty agreement substantially in the form attached hereto as Appendix D (the "**Guaranty**") guaranteeing the Purchaser's performance under Note B, duly and validly executed by Grupo Mexico;
  - (iv) such document or documents as may be necessary to evidence the cancellation by the Purchaser and/or its subsidiaries of all of the Intercompany Debt, substantially in the form attached hereto as Appendix E (the "**Cancellation Documentation**"); and
  - (v) an Assignment and Assumption Agreement substantially in the form attached hereto as Appendix F (the "**Assignment and Assumption Agreement**"), duly and validly executed by the Purchaser assuming all of the Seller's rights and obligations under the Agreement Among Certain Stockholders of SPCC, dated as of January 2, 1996, as amended on June 11, 2001 and as may be amended from time to time thereafter (the "**Stockholders' Agreement**").
- (d) Upon the Closing, the Seller shall, and the Parent shall cause the

Seller to:

- (i) pay a dividend comprised of the cash received from the Purchaser pursuant to Section 2(c)(i) to the Parent immediately upon receipt thereof, and the Parent immediately thereupon shall use \$450 million of such cash to pay or repay the outstanding indebtedness under the \$450,000,000 Revolving Credit Agreement dated as of

December 21, 1999, as amended and extended, among the Parent, as Borrower; Grupo Mexico, as Guarantor; the Lenders party thereto and The Chase Manhattan Bank, as Administrative Agent; and

- (ii) irrevocably assign to the Parent any and all interest it has in Note B and the Guaranty pursuant to an Irrevocable Assignment and Acknowledgement of Assignment by and among the Parent, the Seller and the Purchaser (the "**Parent Assignment**"), substantially in the form attached hereto as Appendix G.

(e) Effective upon Closing, the Parent shall irrevocably assign any and all interest it has in Note B and the Guaranty, pursuant to an Irrevocable Assignment and Acknowledgement of Assignment by and among the Parent, the Environmental Trust (as hereinafter defined), the Purchaser and Grupo Mexico (the "**Environmental Trust Assignment**"), substantially in the form attached hereto as Appendix H, to the ASARCO Trust (the "**Environmental Trust**") to be created pursuant to the Consent Decree and the Trust Agreement to be dated on or about the date the Consent Decree is entered by the Court.

(f) Effective upon Closing, after the execution of the Parent Assignment and prior to the execution of the Environmental Trust Assignment, the Parent shall execute a Security Agreement (the "**Security Agreement**"), substantially in the form attached hereto as Appendix I, in favor of the United States, which provides the United States a security interest in Note B and the Guaranty to secure the reimbursement of Environmental Response Costs (as defined in the Consent Decree) at any or all of the Sites (as defined in the Consent Decree) and the costs of administration of the Environmental Trust.

(g) Immediately upon receipt of the Shares, the Purchaser shall transfer the Shares to SPHC II, as a capital contribution, and SPHC II shall execute an Assignment and Assumption Agreement in form and substance substantially similar to the Assignment and Assumption Agreement.

3. Rights as a Holder of Shares. Except as otherwise provided herein, the Purchaser and, upon transfer, SPHC II shall exercise all rights and privileges and be subject to the restrictions of a holder of Shares as governed by the charter and by-laws of SPCC in effect from time to time (the "**Organizational Documents**") and the Stockholders' Agreement.

4. Representations and Warranties of the Parent and the Seller. The Parent and the Seller, jointly and severally, represent and warrant to the Purchaser as follows:

(a) Except as set forth in Schedule 4(a) attached hereto, the Seller (i) is the sole record and beneficial owner of the Shares and does not own any other shares of Class A Common Stock or other securities issued by SPCC or any of its subsidiaries which are not listed on Schedule 4(a); and (ii) has good and marketable title to the Shares and the certificates representing the Shares, free and clear of any liens, charges, security interests, options, claims, mortgages, pledges, proxies, voting trusts or agreement, obligations, understandings or



arrangements or other restrictions on title or transfer of any nature ("**Encumbrances**") whatsoever (other than under the Stockholders' Agreement).

(b) The stock certificates, stock powers, endorsement, assignments and other instruments to be executed and delivered by the Seller to the Purchaser at the Closing will be valid and binding obligations of the Seller, enforceable in accordance with their respective terms, and will effectively vest in the Purchaser good, valid and marketable title to all the Shares and appurtenant rights to be transferred to the Purchaser pursuant to and as contemplated by this Agreement free and clear of all Encumbrances. Upon the sale to the Purchaser, the Shares will not be subject to any agreement, arrangement or understanding with respect to the voting, dividend rights or disposition of the Shares (other than this Agreement, the Organizational Documents and the Stockholders' Agreement).

(c) The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(d) The Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey.

(e) Each of the Parent and the Seller has full corporate power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby. All corporate acts and other proceedings required to be taken by each of the Parent and the Seller to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and properly taken.

(f) This Agreement has been duly executed and delivered by each of the Parent and the Seller and constitutes a legal, valid and binding obligation of each of the Parent and the Seller enforceable against each of the Parent and the Seller in accordance with its terms. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (i) conflict with or result in any breach of any provision of the certificate of incorporation, the by-laws or similar organizational documents of the Parent, the Seller or any of their Significant Subsidiaries (as defined under Rule 1-02(w) of Regulation S-X of the Securities Act of 1933, as amended (the "**Securities Act**")); (ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Authority (as defined below) or other Person (as defined below) (including consents from parties to loans, contracts, leases and other agreements to which the Parent, the Seller or any of their Significant Subsidiaries is a party); (iii) require any consent, approval or nature under, or result in a violation or breach of, or constitute (with or without due notice or the passage to time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any material agreement applicable to the Parent, the Seller or any of their Significant Subsidiaries; or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Parent or the Seller or any of their properties or assets conflict with or result in any violation of or default under any material contract to which either the Parent, the Seller or any of their Significant Subsidiaries is a party. As used herein, the term "**Governmental Authority**" shall mean any nation, or government, or any state, regional, local or other political subdivision thereof. As used herein, the term "**Person**" shall mean an

individual, partnership, corporation, limited liability company, business trust, joint stock company, estate, trust, unincorporated association, joint venture. Governmental Authority or other entity, of whatever nature

(g) The sale and transfer of the Shares contemplated hereby is necessary to eliminate the outstanding secured debt of the Parent that had originally been due and payable on November 10, 2002.

(h) Upon the consummation of the transactions contemplated hereby, the Parent fully intends to continue its operations at least over the next 12 months following the transfer of the Shares.

(i) The Parent fully intends to fulfill its environmental obligations to the United States, States, tribes and pursuant to all private party civil litigation settlements to the fullest extent of its capabilities.

(j) The sale and transfer of the Shares contemplated by this Agreement provides reasonably equivalent value for the Shares. The Parent and the Seller have received an opinion, including the Valuation Report attached thereto relating to the valuation of the Shares, of Ernst & Young to that effect (the "**E&Y Opinion**"), a copy of which is attached hereto as Appendix J.

5. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Seller as follows:

(a) The Purchaser and, upon transfer, SPHC II is acquiring the Shares for investment for its own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof in violation of the Securities Act.

(b) The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(c) The Purchaser has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. All corporate acts and other proceedings required to be taken by the Purchaser to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and properly taken.

(d) This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not conflict with or result in any violation of or default under the Purchaser's organizational documents, or require any consent, approval or authorization of any Governmental Authority, which would prevent the consummation of the transactions contemplated hereby.

6. Conditions Precedent to Closing.

(a) The obligation of the Purchaser to consummate the Closing is subject to the satisfaction or waiver by the Purchaser, on or prior to the Closing Date, of each of the following conditions:

(i) The Seller shall have delivered the stock certificates and stock power referred to in Section 1(c).

(ii) The Purchaser shall have secured funding on terms reasonably acceptable to the Purchaser to enable the Purchaser to fulfill its obligations hereunder.

(iii) The Parent and the Seller shall have duly executed and delivered the Assignment and Assumption Agreement.

(iv) The Parent and the Seller shall have duly executed and delivered the Parent Assignment.

(v) The Parent shall have duly executed and delivered the Security Agreement.

(vi) The Parent and the Seller shall have duly executed and delivered the Environmental Trust Assignment.

(vii) The Consent Decree shall (i) have been entered by the Court in form and substance as provided in Appendix C or as otherwise approved by the Purchaser in its sole discretion and (ii) be in full force and effect and, in the sole discretion of the Purchaser, shall not have been stayed, modified, reversed or amended in any material manner subsequent to entry.

(viii) The Purchaser shall have received the E&Y Opinion, including the Valuation Report attached thereto. The Purchaser shall have received a bring down of such E&Y Opinion and Valuation Report, which shall be dated as of a date on or reasonably prior to the Closing Date, at the sole discretion of the Purchaser.

(ix) No action or proceeding shall be pending or threatened challenging or seeking to (x) restrain or prohibit the purchase and sale of the Shares, the terms of the Final Consent Decree or any of the other transactions contemplated hereby or thereby or (y) impose material limitations on the ability of the Purchaser effectively to exercise full rights of ownership of the Shares, including the right to vote the Shares, or there shall be any statute, rule, regulation, judgment, order or injunction enacted, entered, enforced, promulgated or deemed applicable to the transactions contemplated by the Agreement, or any other action shall be taken by any Governmental Authority that is reasonably likely to result, directly or indirectly, in any of the foregoing consequences.

(x) All material consents of any Person necessary to the consummation of the Closing and the other transactions contemplated, including consents from parties to loans, contracts, leases or other agreements and consents from governmental agencies, whether federal, state or local shall have been obtained, and a copy of each such consent shall have been provided to the Purchaser at or prior to the Closing.

(xi) All of the representations and warranties of the Parent and the Seller set forth in this Agreement that are qualified as to materiality shall be true and complete and any such representations and warranties that are not so qualified shall be true and complete in all material respects, in each case as of the date of this Agreement and as of the Closing Date.

(xii) Neither the Parent nor the Seller shall have failed to perform in any material respect any material obligation or to comply in any material respect with any agreement or covenant of the Company to be performed or complied with by it under this Agreement.

The foregoing conditions are for the sole benefit of the Purchaser, may be waived by the Purchaser, in whole or in part, at any time and from time to time in the sole discretion of the Purchaser. The failure by the Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

(b) The obligation of the Seller to consummate the Closing is subject to the satisfaction or waiver by the Seller, at or prior to the Closing, of each of the following conditions:

(i) The Purchaser shall have delivered \$500 million in cash to the Seller, subject to Section 1(c), and shall have duly executed and delivered the Cancellation Documentation.

(ii) The Purchaser shall have duly executed and delivered to the Seller Note A and Note B and Grupo Mexico shall have duly executed and delivered the Guaranty.

(iii) The Purchaser shall have duly executed and delivered the Assignment and Assumption Agreement.

(iv) The Consent Decree shall (i) have been entered by the Court in form and substance as provided in Appendix C or as otherwise approved by the Seller in its sole discretion and (ii) be in full force and effect and, in the sole discretion of the Seller, shall not have been stayed, modified, reversed or amended in any material manner subsequent to entry.

(v) No action or proceeding shall be pending or threatened challenging or seeking to restrain or prohibit the purchase and sale of the Shares,

the terms of the Final Consent Decree or any of the other transactions contemplated hereby.

The foregoing conditions are for the sole benefit of the Seller, may be waived by the Seller, in whole or in part, at any time and from time to time in the sole discretion of the Seller. The failure by the Seller at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

7. Covenants.

(a) Payment of SPCC Dividend. If the Closing Date shall occur prior to receipt by the Parent of the dividend share based on its ownership of the Shares arising from SPCC operations during the Fourth Quarter of 2002 (the "**Fourth Quarter Dividend**"), then the Purchaser shall pay to the Parent any such Fourth Quarter Dividend that may be received with respect to the Shares.

(b) Restrictions on Transfer; Legends. All certificates representing the Shares and, until such time as the Shares are sold in an offering which is registered under the Securities Act or SPCC shall have received an opinion of counsel satisfactory in form and content to SPCC that such registration is not required in connection with a resale (or subsequent resale) of the Shares, all certificates issued in transfer thereof or substitution therefor, shall, where applicable, have endorsed thereon the following (or substantially equivalent) legends:

- (i) "The securities represented by this certificate have not been registered under the Securities Act of 1933. The shares of Class A Common Stock represented by this certificate are subject to provisions contained in the Agreement Among Certain Stockholders of Southern Peru Copper Corporation dated as of January 2, 1996, as amended by a First Amendment thereto dated June 11, 2001, copies of which are on file in the office of the Secretary of Southern Peru Copper Corporation."
- (ii) Any legend required to be placed thereon by any applicable state securities law.
- (iii) The legend required by the Stockholders' Agreement that such Shares are subject to the Stockholders' Agreement.

(c) Confidentiality. Except as otherwise provided herein, the Parent and the Seller shall, and the Parent shall cause the Seller and the consultants, advisors and representatives of itself and the Seller to treat after the date hereof as strictly confidential (unless compelled or threatened to be compelled to disclose by judicial or administrative process in writing, in which case the Parent and the Seller shall provide the Purchaser with copies of such written notice immediately upon receipt of such notice and shall allow the Purchaser reasonable opportunity to review such notice) all nonpublic, confidential or proprietary information concerning the Purchaser, SPCC or their respective affiliates, and the Parent and the Seller shall

not, and the Parent shall cause the Seller and the consultants, advisors and representatives of itself and the Seller not to, after the date hereof, use such information to the detriment of the Purchaser, SPCC or their respective affiliates.

(d) Subsequent Actions. If at any time after the Closing the Purchaser shall consider or be advised that any deeds, bills of sale, instruments of conveyance, assignments, assurances or any other actions or things are necessary or desirable (i) to vest, perfect or confirm ownership (of record or otherwise) in the Purchaser, its right, title or interest in, to or under any or all of the Shares, (ii) to vest, perfect or confirm ownership (of record or otherwise) in SPCC any of its rights properties or assets or (iii) otherwise to carry out this Agreement, the Parent and the Seller shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments and assurances and take and do all such other actions and things as may be requested by the Purchaser in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Purchaser or SPCC or otherwise to carry out this Agreement.

(e) Conduct. The Parent and the Seller agree that, from the date hereof until the Closing Date they shall not, and the Parent shall not permit the Seller or any of its other subsidiaries to, take any action that would impair materially its or their ability to consummate the transactions contemplated by this Agreement on a timely basis.

(f) Notices of Certain Events. The Parent and the Seller shall, and the Parent shall cause the Seller to, promptly notify the Purchaser of:

- (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;
- (ii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and
- (iii) any actions, suits, claims, investigations or proceedings commenced or, to the knowledge of the Parent or the Seller, threatened against, relating to or involving or otherwise affecting the Parent, the Seller or any of its other subsidiaries that relate to the consummation of the transactions contemplated by this Agreement.

(g) Reasonable Best Efforts. Subject to the terms and conditions of this Agreement, the parties hereto shall, and the Parent will cause the Seller to, use its and their reasonable best efforts or take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the transactions contemplated by this Agreement as promptly as practicable. In furtherance and not in limitation of the foregoing, each of the parties hereto agrees to make all filings with all Governmental Authorities required to be made in connection with the transactions contemplated

hereby as promptly as practicable and to supply as promptly as practicable any additional information and documentary material that may be requested in connection therewith.

(h) Certain Filings. The parties hereto shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement; and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

(i) Public Announcements. The parties hereto shall consult with each other before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby and, except as may be required by applicable law or any listing agreement with any applicable securities exchange, will not issue any such press release or make any such public statement prior to such consultation.

8. Termination. This Agreement may be terminated, and the transactions contemplated hereby abandoned, at any time prior to the Closing Date:

(a) By the mutual written consent of the Purchaser and the Seller.

(b) By the Purchaser if any Governmental Authority shall have issued an order, decree or ruling or taken any other action (which order, decree, ruling or other action the parties hereto shall use their reasonable efforts to lift), which restrains, enjoins or otherwise prohibits the acquisition by the Purchaser of all the Shares.

(c) By the Purchaser if the Closing has not been consummated on or before 30 days after entry of the Final Consent Decree.

9. General Provisions.

(a) No Assignments. Except for a transfer by the Purchaser to a wholly owned subsidiary, none of the parties hereto shall transfer, assign or encumber any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of each other party, and any attempt to so transfer, assign or encumber shall be void.

(b) Notices. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that a transmission confirmation is received by the sender (with a confirming copy sent by a leading international express courier), or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested, in any case addressed as follows:

If to the Purchaser, to:

Americas Mining Corporation  
2575 East Camelback Road  
Suite 500  
Phoenix, Arizona 85016  
Attention: Chief Legal Officer

If to SPHC II, to:

SPHC II Incorporated  
Baja California 200  
Colonia Roma Sur  
06760 Mexico City, Mexico  
Attention: Chief Legal Officer

If to the Seller, to:

Southern Peru Holdings Corporation  
Baja California 200  
Colonia Roma Sur  
06760 Mexico City, Mexico  
Attention: Chief Legal Officer

If to the Parent, to:

ASARCO Incorporated  
2575 East Camelback Road  
Suite 500  
Phoenix, Arizona 85016  
Attention: Chief Legal Officer

The address of a party, for the purposes of this Section 9(b), may be changed by giving written notice to the other parties of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

(c) Choice of Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of New York.

(d) Jurisdiction. The parties to this Agreement agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof may be brought (i) in the action styled United States v. ASARCO, Inc. and Southern Peru Holdings Corporation, No. CIV-02-2079-PHX-RCB in the Court or (ii) in the courts of the State of New York in New York County or in the U.S. District Court for the



Southern District of New York, and the parties hereto hereby irrevocably accept the non-exclusive personal jurisdiction of the Court or those courts for the purpose of any suit, action or proceeding. In addition, the parties hereto each hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any judgment entered by any court in respect thereof brought in the Court or in any court of the State of New York in New York County or in the U.S. District Court for the Southern District of New York, and each hereby further irrevocably waives any claim that any suit, action or proceedings brought in the Court or any such other court has been brought in an inconvenient forum.

(e) Severability. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its effect, shall be as close as possible to the unenforceable or invalid term or provision.

(f) Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(g) Modification, Amendment and Waiver: Benefit. This Agreement may not be modified, amended, supplemented, canceled or discharged, except by written instrument executed by all parties. The failure or partial failure at any time to enforce or exercise any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of any party thereafter to enforce each and every provision hereof in accordance with its terms. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

(h) Entire Agreement. This Agreement, taken in conjunction with Note A, Note B, the Guaranty, the Cancellation Documentation, the Assignment and Assumption Agreement, the Parent Assignment, the Environmental Trust Assignment and the Stockholders' Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

(i) Headings. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

(j) Expenses. Whether or not the sale and purchase of the Shares shall be consummated, each party hereto shall pay its own expenses incident to preparing for, entering into and carrying out this Agreement and the transactions contemplated hereby.

(k) Survival of Representations and Warranties. Each of the representations and warranties of the Parent and Seller in this Agreement or in any schedule, instrument or other document delivered pursuant to this Agreement shall survive the Closing Date and shall continue in force thereafter. The representations and warranties of the Purchaser shall not survive the Closing Date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers, partners or other representatives, thereunto duly authorized, all as of the day and year first above written.

AMERICAS MINING CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

SPHC II INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

SOUTHERN PERU HOLDINGS CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

ASARCO INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 4(a)**

**LIENS**

None

## GUARANTY

In order to induce Payee to accept the Note attached hereto as Exhibit A (the "Note"; terms defined therein and not otherwise defined herein being used herein as therein defined) as part of the consideration to be paid by Maker to Payee under the Stock Purchase Agreement, the undersigned ("Guarantor") hereby irrevocably and unconditionally guaranties, as primary obligor and not merely as surety, the due and punctual payment in full of all principal, interest and other amounts from time to time owing to Payee by Maker under the Note (the "Obligations") when the same shall become due, whether at stated maturity, by acceleration or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)). This Guaranty is a guaranty of payment when due and not of collectibility.

The obligations of Guarantor hereunder are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Maker under the Note, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Guaranty that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of Guarantor hereunder, which shall remain absolute and unconditional as described above: (a) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived; or (b) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under this Guaranty or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with.

Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that Payee exhaust any right, power or remedy or proceed against Maker under this Guaranty, or against any other Person under any other guarantee of, or security for, any of the Obligations.

Guarantor hereby agrees that, until the payment and satisfaction in full of all Obligations, it shall not exercise any right or remedy arising by reason of any performance by it of its guaranty hereunder, whether by subrogation or otherwise, against Maker or any other guarantor of any of the Obligations or any security for any of the Obligations.

Any indebtedness of Maker now or hereafter held by Guarantor is hereby subordinated in right of payment to the Obligations, and any such indebtedness of Maker to Guarantor collected or received by Guarantor after an Event of Default has occurred and is

continuing shall be held in trust for Payee and shall forthwith be paid over to Payee to be credited and applied against the Obligations.

Guarantor agrees to pay, or cause to be paid, on demand, and to save Payee harmless against liability for, any and all costs and expenses (including reasonable fees and disbursements of counsel) incurred or expended by Payee in connection with the enforcement of or preservation of any rights under this Guaranty.

The rights, powers and remedies given to Payee by this Guaranty are cumulative and shall be in addition to and independent of all rights, powers and remedies given to Payee by virtue of any statute or rule of law or in the Note or any agreement between Guarantor and Payee or between Maker and Payee. Any forbearance or failure to exercise, and any delay by Payee in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Maker (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceeding had not been commenced) shall be included in the Obligations because it is the intention of Guarantor and Payee that the Obligations which are guaranteed by Guarantor pursuant to this Guaranty should be determined without regard to any rule of law or order which may relieve Maker of any portion of such Obligations.

In the event that all or any portion of the Obligations are paid by Maker, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Payee as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

Guarantor hereby represents and warrants to Payee that: (a) Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (b) Guarantor has the corporate power, authority and legal right to execute, deliver and perform this Guaranty and has taken all necessary corporate action to authorize its execution, delivery and performance of this Guaranty; (c) this Guaranty has been duly executed and delivered by a duly authorized officer of Guarantor, and this Guaranty constitutes the legally valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles relating to or limiting creditors' rights generally; and (d) the execution, delivery and performance of this Guaranty will not violate any provision of any existing law or regulation binding on Guarantor, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on Guarantor, or the certificate of incorporation or bylaws (or comparable organizational

documents) of Guarantor or any agreement to which Guarantor is a party or by which Guarantor or any of its assets may be bound.

In case any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF GUARANTOR AND PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

This Guaranty is a continuing guaranty and shall be binding upon Guarantor and its successors and assigns. This Guaranty shall inure to the benefit of Payee and its permitted successors and assigns pursuant to Section 8(i) of the Note, including without limitation (x) ASARCO, (y) the United States, to the extent necessary in connection with the creation, perfection and enforcement of the security interest granted to it as contemplated by said Section 8(i), and (z) the trustee of the ASARCO Trust, in each case as contemplated by the terms of the Stock Purchase Agreement.

ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY MAY BE BROUGHT (I) IN THE ACTION STYLED UNITED STATES V. ASARCO, INC. AND SOUTHERN PERU HOLDINGS CORPORATION, NO. CIV-02-2079-PHX-RCB IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA OR (II) IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS GUARANTY GUARANTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS OR LACK OF PERSONAL JURISDICTION AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS GUARANTY. Guarantor hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to Guarantor at its address set forth below its signature hereto, such service being hereby acknowledged by Guarantor to be sufficient for personal jurisdiction in any action against Guarantor in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of Payee to bring proceedings against Guarantor in the courts of any other jurisdiction.

GUARANTOR AND, BY THEIR ACCEPTANCE OF THE BENEFITS OF THIS GUARANTY, PAYEE AND ANY SUBSEQUENT HOLDER OF THE NOTE, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS

GUARANTY OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT  
MATTER OF THIS GUARANTY AND THE GUARANTOR/BENEFICIARY  
RELATIONSHIP THAT IS BEING ESTABLISHED.

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty to be executed  
by its duly authorized officer as of the date set forth below.

**GRUPO MÉXICO, S.A. DE C.V.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: Baja California 200  
Colonia Roma Sur  
06760 Mexico City, Mexico  
Attention: Chief Legal Officer



*Exhibit A*

[Attach Note B]

**IRREVOCABLE ASSIGNMENT AND ACKNOWLEDGMENT OF ASSIGNMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned SOUTHERN PERU HOLDINGS CORPORATION, a Delaware corporation ("Assignor"), hereby irrevocably sells, assigns and transfers to ASARCO INCORPORATED, a New Jersey corporation ("Assignee"), all of its right, title and interest in and to (a) that certain Promissory Note due May 31, 2010, dated [January \_\_, 2003] in the principal amount of \$100,000,000.00, made by Americas Mining Corporation ("Maker") to Assignor (the "Note"), and (b) that certain Guaranty, dated [January \_\_, 2003], made by Grupo México, S.A. de C.V. ("Guarantor") in favor of Assignor (the "Guaranty"). Copies of the Note and the Guaranty are attached hereto as Exhibits A and B, respectively.

The present sale, assignment and transfer by Assignor of the Note and the Guaranty to Assignee, and the acknowledgment thereof by Maker and Guarantor, are made and delivered pursuant to the terms of that certain Stock Purchase Agreement dated as of [January \_\_, 2003] by and among Maker, Assignor, SPHC II Incorporated and ASARCO Incorporated.

This Irrevocable Assignment and Acknowledgment of Assignment (this "Assignment"), and the rights and obligations of Assignor, Assignee, Maker and Guarantor hereunder, shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of New York (including without limitation Section 5-1401 of the General Obligations Law of the State of New York), without regard to conflicts of laws principles.

**IN WITNESS WHEREOF**, each of Assignor and Assignee has caused this Assignment to be executed by its duly authorized officer as of [January \_\_, 2003].

**SOUTHERN PERU HOLDINGS  
CORPORATION, as Assignor**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASARCO INCORPORATED, as Assignee**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Each of Maker and Guarantor hereby acknowledges and agrees to the terms of  
this Assignment

**AMERICAS MINING CORPORATION**, as  
Maker

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRUPO MÉXICO, S.A. DE C.V.**, as Guarantor

By: \_\_\_\_\_  
Title: \_\_\_\_\_

*Exhibit A*

[Attach Note B]

*Exhibit B*

[Attach Guaranty]

**ASARCO Trust Agreement**

WHEREAS, this ASARCO Trust Agreement ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2003, between and among ASARCO Incorporated ("Grantor") and the Trustee appointed as provided herein.

WHEREAS, Grantor has various environmental liabilities or potential liabilities to the United States pursuant to certain consent decrees, administrative orders, or environmental statutes.

WHEREAS, the United States has filed a complaint against Grantor and Southern Peru Holdings Corporation pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3004, and the Federal Priorities Statute, 31 U.S.C. § 3713, in a suit denominated United States v. ASARCO, Inc. and Southern Peru Holdings Corporation, No. CIV-02-2079-PHX-RCB (D. Ariz.) ("the Action").

WHEREAS, the United States has alleged in the Action that the terms of a proposed sale of stock owned by Grantor are fraudulent or otherwise contrary to law as to the environmental liabilities for which Grantor is obligated to the United States.

WHEREAS, the United States, Grantor, and Southern Peru Holdings Company have entered into a Consent Decree that resolves the claims raised by the United States in United States v. ASARCO, Inc. and Southern Peru Holdings Corporation, No. CIV-02-2079-PHX-RCB (D. Ariz.).

WHEREAS, pursuant to that Consent Decree, Grantor is required to establish this Trust and to assign the note set forth as Appendix B to the Consent Decree and the guaranty set forth as Appendix D to the Consent Decree to the Trust as consideration in part for the releases and covenants set forth in the Consent Decree.

NOW THEREFORE, in consideration of the foregoing premises and of the mutual covenants contained herein, the parties hereto agree as follows:

**Article I**  
**Definitions**

1. The following terms shall have the meaning set forth below:

(a) "Agreement" means this Trust Agreement including attachments. This term has the same meaning as "Trust Agreement" in the Consent Decree.

(b) "Annual Budget" means any final budget or amendment thereto developed pursuant to Section VIII of the Consent Decree and delivered to the Trustee.

(c) "Consent Decree" means the Consent Decree in United States v. ASARCO, Inc. and Southern Peru Holdings Corporation, No. CIV-02-2079-PHX-RCB (D. Ariz.), including all appendices and attachments thereto.

(d) "Environmental Response" means (1) a response within the meaning of Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, at any Site; (2) and a corrective action or imminent hazard abatement action required or performed pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq, or a state hazardous waste program authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, at any Site; and (3) the planning and implementation of measures to restore, replace or acquire the equivalent of natural resources that have been injured by releases of hazardous substances at the Bunker Hill Mining and Metallurgical Complex Superfund Facility.

(e) "Environmental Response Cost" means all costs incurred in connection with the performance of any Environmental Response. However, this definition does not include (1) any costs incurred prior to February 1, 2003; (2) any attorneys fees incurred

by Grantor; (3) any internal costs of Grantor associated with Grantor's employees or operations, except where (i) sampling and analytical laboratory costs are incurred in lieu of retaining an outside contractor for performance of the same sampling and analytical laboratory work, (ii) such costs were the low bid out of at least three bids, and (iii) such costs are included on an Annual Budget; (4) any costs incurred by other potentially responsible parties who may have a claim for recovery of such costs against Grantor, other than costs incurred pursuant to an Annual Budget under the Consent Decree; or (5) any costs associated with compliance under environmental laws other than CERCLA or RCRA.

(f) "Grantor" means ASARCO Incorporated and its successors and assigns.

(g) "Grantor Representative" means the representative of Grantor designated pursuant to Paragraph 35 and successor representatives.

(h) "Guaranty" means the guaranty attached as Appendix D to the Consent Decree.

(i) "Note" means the note attached as Appendix B to the Consent Decree and referred to therein as "Note B."

(j) "Paragraph" means a portion of this Agreement identified by an arabic numeral.

(k) "Performing Entity" means any person or entity, including but not limited to the United States and ASARCO, designated in an Annual Budget as having the right to seek reimbursement for the performance of specified work projects under such Annual Budget, as provided in Paragraphs 22, 24, and 26 of the Consent Decree.



(l) "Site" means (1) any facility addressed in an existing or future judicial consent decree to which the United States and Grantor are parties, or in an existing or future administrative order on consent or unilateral administrative order issued to Grantor by a federal agency or department, which requires site investigation or other response action under Sections 104(a) or 106 of CERCLA or Sections 3008(h) or 7003 of RCRA; or (2) any facility at which Grantor is identified by EPA as a potentially responsible party ("PRP") under CERCLA and which either now or in the future (a) is listed or proposed for listing on the National Priorities List pursuant to Section 105 of CERCLA or (b) is determined by EPA to have a Hazard Ranking System score of at least 28.5 and at which a CERCLA response action is being performed or overseen by EPA, the U.S. Department of the Interior ("DOI"), or the U.S. Department of Agriculture ("USDA"), or by a state agency that has been formally designated as the lead response agency by EPA pursuant to 40 C.F.R. Part 35, Subpart O; or (3) any facility that the United States and Grantor agree, in an Annual Budget prepared pursuant to the Consent Decree, should receive funding for Environmental Response work from the Trust.

(m) "Trust" means the Trust established by this Agreement. This term has the same meaning as "Environmental Trust" in the Consent Decree.

(n) "Trust Estate" has the meaning set forth in Paragraph 7.

(o) "Trust Account" means the ASARCO Account to be established pursuant to Paragraph 9.

(p) "Trustee" means the Trustee appointed pursuant to Paragraph 10 and all successor Trustees appointed pursuant to Paragraph 14(c).

(q) "United States" means the United States of America and all of its departments, agencies, and instrumentalities.

(r) "United States Representative" means the representative of the United States designated pursuant to Paragraph 35 and all successor representatives.

## **Article II**

### **Establishment and Acceptance of Trust**

2. Establishment of Trust. There hereby is established an express trust under the laws of the State of \_\_\_\_\_. The trust so established shall be known as the "ASARCO Trust" and is referred to in this Agreement as the "Trust."

3. Trust Purposes. The primary purpose of the Trust is to collect, administer, and disburse funds to be used for Environmental Response Costs at or in connection with any or all of the Sites. It is understood, however, that Grantor is not hereby admitting any liability with regard to any of the Sites.

4. Grantor Environmental Remediation Trust. For federal tax purposes only, the Trust hereby established is intended to be an environmental remediation trust as described in U.S. Treasury Regulation § 301.7701-4(e). The Trust shall have no purpose of generating income or profit other than income generated by temporary investment of Trust assets, which income shall be incorporated into the corpus of the Trust and used exclusively for Trust purposes. The Trust has been organized with no objective to continue or engage in the conduct of a trade or business. As provided in Paragraph 34, this Agreement may be amended to reflect, for federal tax purposes only, the fact that the Trust has become a Qualified Settlement Fund trust within the meaning of U.S. Treasury Regulations in the event the Trust acquires such status.

5. Irrevocability of Trust. The Trust is irrevocable. Grantor retains no equitable, legal, beneficial, or residual interest in the Trust or Trust Estate.

6. Beneficiary. The beneficiary of the Trust shall be the United States in its capacity as enactor and enforcer of laws protecting the environment and the health and welfare of its citizens.

### **Article III** **Trust Estate and Account**

7. Trust Estate. The Trust Estate is comprised of all contributions acquired by the Trust under the terms of the Consent Decree and this Agreement, including proceeds and payments received under the Note and the Guaranty, and any income or other gains received by the Trustee in connection with investment of the assets held in the Trust Estate.

8. Trust Funding. As provided by the Consent Decree, the Trust shall be funded by Grantor's assignment of the Note to the Trust. The Note is not assignable by the Trustee. In addition to the Note, Grantor shall also assign the Guaranty to the Trust, and the assignment shall specifically state that the Trustee is subrogated to all of Grantor's rights in the Guaranty. The Trustee shall execute the Irrevocable Assignment and Acknowledgement of Assignment set forth as Appendix H to the Consent Decree. The Trust shall be considered to be fully funded once all principal and interest on the Note has been paid in full or the Note and Guaranty have been otherwise discharged

9. Trust Account. The Trustee shall establish an account called the "ASARCO Trust Account" to hold all monies of the Trust Estate other than the Note and the Guaranty. All payments of principal and interest on the Note or the Guaranty shall be deposited by the Trustee into the Trust Account. The Trustee may establish such sub-accounts as are necessary or useful, in his or her discretion, to the exercise of the Trustee's rights, privileges, and powers.

**Article IV**  
**Trustee**

10. Appointment of Trustee. There shall be a Trustee appointed under an instrument in writing executed jointly by the Grantor Representative and the United States Representative.

11. Acceptance of Trust. The Trustee, by his or her execution of this Agreement, indicates that he or she understands and accepts the Trust established herein, accepts the rights, powers, duties and responsibilities set forth herein, and agrees to perform his or her respective duties and responsibilities in accordance with the provisions of this Agreement and the Consent Decree.

12. Powers of Trustee. To carry out the purposes of the Trust and, in addition to the rights, privileges and powers vested in the Trustee elsewhere in this Agreement and those now or hereafter conferred by law, subject to any limitations stated elsewhere herein or imposed by law, the Trustee shall have the following powers until the Trust is terminated:

- (a) To incur any and all fees, taxes, and expenses upon or connected with the Trust or the Trust Estate consistent with this Agreement;
- (b) To hold any assets belonging to the Trust at any place in the United States;
- (c) To invest and reinvest any part or all of the Trust Estate to enable the Trustee to derive a reasonable income from the assets held in Trust pending distribution of such assets, consistent with the safety and liquidity of principal required by the purposes of this Trust (including, but not limited to, the annual budgets), and not to authorize speculation or the carrying on of any business for profit or derivation of any gains therefrom. In particular, investments are limited to the following:
  - (i) Obligations issued or granted by the United States, or any money fund which invests solely in the foregoing obligations;

- (ii) Any obligations issued or guaranteed by any state or municipality in the United States which is rated AAA by Standard & Poor's or Aaa by Moody's Investors Service at the time of investment;
- (iii) Any corporate bonds with an investment grade credit rating of AAA by Standard & Poor's or Aaa by Moody's Investors Service at the time of investment;
- (iv) Certificates of deposit of, accounts with repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000; and
- (v) Certificates of deposit of, accounts with, or other obligations of any bank or corporation endowed with trust powers provided that the full amount of any such certificate of deposit, account, or other obligation is insured by FDIC or FSLIC;
- (d) To hold and retain all or any part of the Trust Estate, as long as advisable;
- (e) To sell, exchange, or otherwise dispose of or liquidate all or any part of the Trust Estate without prior application to or approval by any court;
- (f) To make payments authorized by Article V;
- (g) To pursue, adjust, settle, compromise, and arbitrate claims or demands in favor of or against the Trust, including but not limited to claims for taxes and claims on the Note or the Guaranty, relating solely to Trust matters; and
- (h) To represent the Trust with regard to any matter concerning the Trust before any federal, state, or local agency or authority, including but not limited to claims on the Note or the Guaranty.

13. Compensation of Trustee. The Trustee shall receive compensation for his or her services hereunder according to the fee schedule set forth as Attachment 1, and Trustee shall be entitled to reimbursement from the Trust Estate for all reasonable expenses incurred by the Trustee in the administration of the Trust.

14. Resignation, Removal, and Successor Trustee.

(a) Resignation of Trustee. The Trustee may resign at any time, with or without cause, and without the necessity of any court proceeding, by giving not less than sixty (60) days prior written notice to Grantor and the United States. Such resignation shall take effect on the date set forth in the resignation notice, which shall be a date not less than sixty (60) days after the date such notice has been sent to the aforesaid parties, unless a successor Trustee shall have been sooner appointed as provided in Subparagraph 14(c) herein, in which event such resignation shall take effect immediately upon the appointment and acceptance of the successor Trustee.

(b) Removal of Trustee. Notwithstanding anything contained herein to the contrary, the Trustee may be removed at any time, with or without cause, under an instrument in writing delivered to the Trustee and executed jointly by the Grantor Representative and the United States Representative. Removal shall be effective upon delivery of such instrument to the Trustee.

(c) Successor Trustee. In the event that the Trustee hereunder shall resign, be removed, or otherwise cease to act as Trustee, a successor Trustee shall be appointed under an instrument in writing executed jointly by the Grantor Representative and the United States Representative. The successor Trustee, by his or her execution of an addendum to this Agreement, indicates that he or she understands and accepts the Trust

established herein, accepts the rights, powers, duties and responsibilities set forth herein, and agrees to perform his or her respective duties and responsibilities in accordance with the provisions of this Agreement and the Consent Decree.

(d) Transfer to Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to his or her predecessor, an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, title to Trust assets, trusts, duties, and other obligations hereunder as Trustee. However, such predecessor shall nevertheless, upon written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, title to Trust assets, trusts, duties, and other obligations of such predecessor hereunder; and every predecessor Trustee shall deliver all assets of the Trust Estate held by him or her to his or her successor; provided, however, that before any such delivery is required or made, all allowable fees and expenses of any such predecessor Trustee shall be paid in full.

#### **Article V** **Payments From Trust Estate**

15. Qualifying Costs. The Trust Estate may only pay costs described in the categories set forth below. The payment of qualifying costs within the meaning of Subparagraph (a) of this Paragraph is governed solely by the procedures set forth in Paragraph 16. Except as otherwise provided herein, nothing in this Agreement creates any rights, including the right to payment, in any party, whether or not a party to this Agreement.

(a) Environmental Response Costs. This category generally includes Environmental Response Costs incurred by Performing Entities or their contractors at a

Site. To qualify for payment under this Agreement, the Environmental Response work must be listed on an Annual Budget.

(b) Allowable Trust Fees, Expenses, and Taxes. All Trust administration fees, expenses, and taxes authorized pursuant to this Agreement shall be paid from the Trust Estate. Payment of trust fees and expenses may be made from the Trust Account at the Trustee's discretion and such payments are not subject to Paragraph 16. Payment of trust taxes shall be made from the Trust Account and such payments are not subject to Paragraph 16.

16. Annual Budgets and Procedures For Payments. This Paragraph applies to the Trustee's administration of Annual Budgets and payments of qualifying costs under Paragraph 15(a).

(a) Annual Budget. Pursuant to the Consent Decree, the United States shall submit Annual Budgets to the Trustee for the anticipated payment of qualifying costs in the following year. Pursuant to the Consent Decree, the United States may submit amended Annual Budgets to the Trustee amending a previously submitted Annual Budget. The Trustee is obligated to accept and administer the Annual Budgets and amended Annual Budgets unless the Trustee concludes that such budget would be inconsistent with the stated purpose of the Trust or concludes that:

(i) the Annual Budget would require the Trust to pay monies at a facility that is not a Site;

(ii) the Annual Budget conflicts with Grantor's existing work obligations specifically set forth in an existing consent decree or order and the conflicting provision or provisions are not expressly conditioned upon obtaining a



modification of the existing consent decree or order pursuant to Section XIII of the Consent Decree;

(iii) the Annual Budget would require the Trust to pay monies for costs that are not Environmental Response Costs;

(iv) the Annual Budget would require the Trust to pay more money than it is reasonably anticipated will be available from the Trust for any calendar year; or

(v) the Annual Budget does not adequately fund the performance of Environmental Response work for which ASARCO has been designated as responsible under such Annual Budget.

With respect to Subparagraph (a)(ii) of this Paragraph, the Trustee's obligations shall be limited to the review of information provided to him or her by the United States, Grantor, or any other Performing Entity. Within twenty (20) days of receipt of an Annual Budget or amended Annual Budget, the Trustee shall notify the United States and Grantor in writing that the Trustee either accepts or rejects such Annual Budget or amended Annual Budget. A rejection notice under this Paragraph shall contain an explanation of the Trustee's rejection of the Annual Budget or amended Annual Budget. In the event of a rejection determination by the Trustee under this Paragraph, the United States may submit a new budget and schedule in accordance with the provisions of the Consent Decree, or may seek judicial review of the Trustee's decision to reject the Annual Budget. The Trustee's decision to accept an Annual Budget is subject to judicial review only as provided under Paragraph 26 of the Consent Decree.

(b) Payment of Claims. A Performing Entity may submit reimbursement requests ("Claims") to the Trustee, with a copy to the United States and Grantor, for any Environmental Response work for which the claimant was designated as Performing Entity under any Annual Budget. Such Claims shall be made in the form set forth in Attachment 2, and must include a full description of all work performed, itemized contractor invoices, and other supporting documentation as required by the form. Except as provided in Subparagraphs (c) and (d) of this Paragraph, the Trustee shall be authorized to reimburse a Performing Party only to the extent a Performing Party submits receipts or other proof showing that it has already paid its contractors directly for work that was authorized under the Annual Budget, or, in the case of Grantor's internal sampling and analytical laboratory costs incurred in lieu of retaining an outside contractor for performance of the same sampling and laboratory work, where such costs were the low bid out of at least three bids and were included on an Annual Budget, only to the extent that Grantor submits documentation establishing that such costs have already been incurred. The United States and/or Grantor shall have thirty (30) days from the date of service of a copy of any Claim in which to serve an objection to that Claim, indicating the basis for contending the Claim is not authorized under the Annual Budget or is not properly documented or supported. Such objection shall be served on the Trustee, the Performing Entity making the Claim, and the United States or Grantor as appropriate. If there is no objection within thirty (30) days from the date of service of a copy of the Claim, the Trustee shall promptly pay the Claim to the Performing Entity subject to Subsection (e) of this Paragraph, unless the Trustee concludes that such payment is not authorized under the Annual Budget or that the Claim was not properly documented or

supported. In the event that there is an objection or the Trustee determines that the Claim as submitted should not be paid, the Performing Entity making the Claim shall promptly submit a written presentation to the Trustee in support of payment of the Claim or shall withdraw the Claim. The Trustee shall promptly make an independent determination as to whether to allow the Claim, and shall notify the United States, Grantor, and the Performing Entity of his or her decision. The decision of the Trustee to pay a Claim is not subject to judicial review except upon an allegation by Grantor or the United States that the Trustee exceeded his or her legal authority in making that decision. The decision of the Trustee to deny a Claim is subject to judicial review only upon petition of the Performing Entity that submitted the Claim alleging that the Trustee was in error in concluding that payment of the Claim was not authorized under an Annual Budget or that the Claim was not properly documented or supported.

(c) Direct Payment to Contractor. The Trustee shall be authorized to directly reimburse a contractor of a Performing Entity, except a contractor of the United States, for a Claim or a portion thereof upon submission of unpaid contractor invoices with the Claim and a statement by the Performing Party that the contractor has not yet been paid and is to be paid directly by the Trustee.

(d) Special Procedure Where EPA is the Performing Entity. If an Annual Budget accepted by the Trustee designates EPA as the Performing Entity for Environmental Response work at a Site, the Trustee shall transfer the amount budgeted for that work from the Environmental Trust to a special account established by EPA for that Site within the Hazardous Substances Superfund without the need for the filing of a Claim. The Trustee shall make the transfer, in accordance with instructions provided by

EPA, by the later of (a) ten (10) days after the Trustee's acceptance of the Annual Budget designating EPA as the Performing Party, or (b) ten (10) days after receipt of the payment under Note B being allocated in that Final Budget and Schedule. EPA may utilize the transferred funds only to pay for performance or oversight of the Environmental Response work specified for the relevant Site in the Annual Budget. Within sixty (60) days after completion of that work, EPA shall submit a report to the Trustee documenting the Environmental Response work performed and the costs incurred for the work and/or costs incurred for oversight of work performed. EPA shall provide the same degree of documentation as required in Subparagraph (b) of this Paragraph, and the process of reviewing, challenging and approving such submissions shall be the same as set forth in Subparagraph (b) of this Paragraph. If the United States has expended less than the full amount transferred to it under this Subparagraph for performance or oversight of the Environmental Response work specified in the Annual Budget, it shall return the excess proceeds to the Trust. If the Trustee, after review of EPA's report, determines that EPA expended less than the full amount transferred on performance or oversight of the Environmental Response work specified in the Annual Budget and has not returned the excess proceeds to the Trust, the Trustee shall so notify EPA and shall request repayment of the amount not expended on that work or oversight. EPA shall have thirty (30) days to either challenge the Trustee's determination by petition to this Court or to pay the amount requested to the Trustee for redeposit into the Trust Account. If the Trustee's determination is upheld in whole or in part, EPA shall, within thirty (30) days, pay the amount determined to be payable to the Trustee for redeposit into the Trust Account.

(e) Reserve and Limitations on Payments. Except as otherwise provided herein, approved Claims and payments required by Subparagraph 15(d) shall be paid in full unless making the payment in full would cause the value of the Trust Account to fall below a reserve of \$50,000 plus the amount reasonably anticipated by the Trustee to be necessary to cover payments under Subparagraph 15(b). Instead, a partial payment shall be made such that the value of the Trust Account will not fall below such reserve, and the remainder of the approved Claim or payments required by Subparagraph 15(d) shall be made when sufficient Trust funds become available. However, once the Trust has been fully funded pursuant to Paragraph 8, the limitation on payments in this Subparagraph shall no longer be in effect. At that time, the Trustee is authorized to utilize the full value of the Trust Account for the payment remaining Trust fees, expenses, and taxes and thereafter for Environmental Response Costs as provided in this Agreement.

## **Article VI** **Professional Services**

17. Accounting Services. The Trustee shall engage accountants to perform accounting services for and at the expense of the Trust.

18. Other Professional Services. The Trustee may engage such attorneys, custodians, clerks, engineers, contractors, subcontractors, investment counsel, and agents (including any firm or entity with which a Trustee is affiliated or in which the Trustee may have an interest) and make from the Trust Estate such payments therefor as he or she shall deem reasonable for the implementation of the purposes of the Trust and the Trust's administration.

**Article VII**  
**Accounts and Records**

19. Accounting Records. The Trustee shall keep or cause to be kept proper books, records, and accounts of all transactions relating to the Trust and the Trust Account in such form and manner as will enable the Trustee to produce all reports and accountings called for in this Agreement.

20. Quarterly Reports. Within thirty (30) days after the end of each calendar quarter, the Trustee shall provide Grantor and the United States with a quarterly report summarizing the status of the Trust Account, Trust investments, the receipt and payment of claims, disputes (if any), Trust fees, expenses, and taxes, and any other issues related to Trust administration that the Trustee deems appropriate.

21. Tax Reports. In accordance with U.S. Treasury Regulation § 301.7701-4(e)(2), no later than March 1 following the close of a calendar year during the Trust's term, the Trustee shall provide Grantor and the United States with the following information:

(a) Schedule K-1 or similar schedule as attached to the Form 1041 for the Trust filed with the Internal Revenue Service for the calendar year reporting the items attributable to the Trust Account; and

(b) A statement showing all items of income, deduction and credit of the Trust for the calendar year, including information necessary to determine which such items are deductible expenses and capital expenditures for the year.

22. Cooperation. The Trustee shall reasonably cooperate with requests for accounting and tax information from Grantor or the United States.

**Article VIII**  
**Rights and Liabilities**

23. Extent of Liability. The Trustee shall not be liable for his or her acts, omissions, or defaults, regardless of whether or not occasioned by negligence of the Trustee, nor for the acts, omissions or defaults of any agent or depository employed, appointed, or selected by the Trustee, except for such Trustee's own acts, omissions or defaults occasioned by the gross negligence or willful misconduct of such Trustee. The Trustee shall not be responsible for the acts or omissions of any predecessor Trustee nor, in particular, shall the Trustee be liable in regard to the exercise or nonexercise of any power or discretion properly delegated pursuant to the provisions of this Agreement.

24. Indemnification. Grantor agrees to indemnify, hold harmless and defend, to the extent allowed by law, the Trustee from any and all liability arising out of this Agreement excepting only such liability as may be imposed on the Trustee pursuant to Paragraph 23.

25. Survivorship of Protections. Notwithstanding any other provision of this Agreement to the contrary, the terms and conditions of Paragraphs 23 and 24 hereof shall survive the termination of this Agreement and may not be altered, amended or revoked without the consent of the beneficiary thereof.

26. No Bond or Insurance Required. No bond or other security shall be exacted or required of any Trustee appointed by this Agreement.

**Article IX**  
**Termination of Trust**

27. Termination of Trust. The Trust shall terminate when the Trust Estate has been fully disbursed according to the terms and conditions of this Agreement, all tax and reporting obligations have been fulfilled, and all pending disputes, if any, have been finally resolved.

**Article X**  
**Miscellaneous**

28. Headings. The section headings set forth in this Agreement are included for the convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

29. Particular Words. Any word contained in the text of this Agreement shall be read as a singular or plural and a masculine, feminine, or neuter, as may be applicable or permissible in the particular context. Unless otherwise specifically stated, the word "person" shall be taken to mean and include an individual, partnership, association, company, corporation, or municipal corporation.

30. Severability. If any provision of this Agreement, or its application to any person or entity or in any circumstances, shall be invalid or unenforceable, the application of such provision to other persons or entities and in circumstances other than those to which it is invalid or unenforceable, and the other provisions of this Agreement shall not be affected by such invalidity or unenforceability.

31. Situs of Trust; Applicable Law. The situs of the Trust herein established is the State of \_\_\_\_\_, and the laws of such state shall control with respect to the construction, administration, and validity of the Trust and to the construction and interpretation of this Agreement.

32. Disputes; Jurisdiction of Court. All disputes arising between or among the Trustee, Grantor, and/or the United States concerning this Agreement that cannot be resolved informally shall be raised with the Court in United States v. ASARCO, Inc. and Southern Peru Holdings Corporation, No. CIV-02-2079-PHX-RCB (D. Ariz.), except that disputes arising out of and relating to the provisions of Paragraph 16 that cannot be resolved informally are subject to



judicial review only to the extent that judicial review is specifically authorized under this Agreement. The Trustee hereby agrees to and accepts the jurisdiction of the United States District Court for the District of Arizona over both the subject matter of the dispute and the Trustee for this purpose. No service of a summons or related process shall be required beyond what is required by the Consent Decree.

33. Non-assignment of Trust Interest. No interest in the Trust is assignable except to a successor corporation or partnership of the assignor. If any other entity ever succeeds to the business of a person with an interest by means of a merger, consolidation, change of name, or any other form of reorganization, such other entity shall thereupon without further action succeed its predecessor, as if originally named in this Agreement.

34. Alterations and Amendments: Conversion to Qualified Settlement Fund Trust  
Upon the written concurrence of the United States, the terms of this Agreement relating to administration of the Trust and Trust assets, except for the provisions of Article V, may be altered or amended to the extent necessary or desirable, but only to the extent that such alterations or amendments do not revoke the Trust and are consistent with the Consent Decree. This Agreement may be amended to reflect, for federal tax purposes only, its operation as a Qualified Settlement Fund trust within the meaning of U.S. Treasury Regulations in the event the Trust acquires such status.

35. Representatives. The Grantor Representative and the United States Representative are as follows:

Grantor Representative

Douglas McAllister  
ASARCO Incorporated  
2575 E. Camelback Road  
Suite 500  
Phoenix, AZ 85016-4240

Phone: (602) 977-6507  
Fax: (602) 977-6706

United States Representative

Chief, Environmental Enforcement Section  
Phone: 202-514-4624  
Fax: 202-353-0296

For Overnight Mail:  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
1425 New York Ave. NW  
Washington, DC 20005  
Ref. DOJ File No. 90-11-3-128/5

For Regular Mail:  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-128/5

Grantor and the United States may change their representative upon written notice to the other party and the Trustee as provided in Paragraph 36.

36. Notices. Whenever this Agreement requires the sending of any notice, such notice shall be sent as follows:

For the Trustee

(Designated on signature page)

For Grantor

Douglas McAllister  
ASARCO Incorporated  
2575 E. Camelback Road  
Suite 500  
Phoenix, AZ 85016-4240  
Phone: (602) 977-6507  
Fax: (602) 977-6706

For the United States

(a) Department of Justice:

For Overnight Mail:  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
1425 New York Ave. NW  
Washington, DC 20005  
Ref. DOJ File No. 90-11-3-128/5  
Phone: 202-514-4624  
Fax: 202-353-0296

For Regular Mail:  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-128/5  
Phone: 202-514-4624  
Fax: 202-353-0296

(b) Environmental Protection Agency:

Michael B. Cook  
Director, Office of Emergency and Remedial Response  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code MC5201G  
Washington, DC 20460  
Phone: 703-603-8960  
Fax: 703-603-9146

The Trustee, Grantor, and the United States may change their addresses upon written notice as provided in Paragraph 36 to the other parties.

37. Binding Effect Each of the individuals signing this Agreement on behalf of any entity hereby certifies that he or she is the duly authorized representative of such entity with full power and authority to bind the entity to the terms and conditions of this Agreement.

38. Counterparts. This Agreement may be executed in two counterparts, each of which will be deemed an original agreement, but all of which will be considered one and the same instrument.

IN WITNESS WHEREOF, the following authorized individuals have executed this ASARCO Trust Agreement as of the date first described above.

ASARCO Trust Agreement

AGREED FOR GRANTOR:

---

DOUGLAS McALLISTER  
ASARCO Incorporated  
2575 E. Camelback Road  
Suite 500  
Phoenix, AZ 85016-4240  
(602) 977-6507

---

Name:  
Title:  
ASARCO Incorporated

ASARCO Trust Agreement

AGREED FOR TRUSTEE:

---

Name:

Contact Information:

**Attachment 1**

**Schedule of Trustee Fees & Expenses**

## **Attachment 2**

### **Claim Form**

To: Trustee, ASARCO Trust

This request for payment is made pursuant to Paragraph 16 of the ASARCO Trust Agreement ("Agreement") for costs qualifying under Paragraph 15(a). This request meets the criteria for payment set forth in the Agreement and is summarized as follows:

1. Date request submitted:
2. Citation to the Annual Budget item to which the qualifying cost relates:
3. Amount of the qualifying cost:
4. Payee for the qualifying costs:
5. Description of the qualifying cost:
6. Description of the documentation substantiating the cost [documents, such as invoices, to be attached; for allowable ASARCO sampling and analytical laboratory costs, documentation shall include, where applicable, hours worked, cost per hour, any expenses, and a general description of the work performed]:
7. Additional information [if any]:

A true and accurate copy of this request for payment and all attachments has been served upon the Grantor Representative and the United States Representative on this date by overnight express.

[Signed]